

Narinder Singh Vs. Devinder Singh and ors.

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Court : Punjab and Haryana

Decided On : Nov-30-1981

Reported in : AIR1982P& H201

Judge : Surinder Singh, J.

Acts : Hindu Minority and Guardianship Act - Sections 8 and 8(3)

Appeal No. : Regular Second Appeal No. 27 of 1971

Appellant : Narinder Singh

Respondent : Devinder Singh and ors.

Advocate for Pet/Ap. : Mr. J. K. Sharma

Judgement :

1. This is a second appeal against a concurrent decision of two Courts below, which has arisen in the circumstances, which are these. Devinder Singh and other respondents filed a suit for possession of agricultural land to the extent of 1/4th share, and for a declaration in respect of the remaining 3/4th share, to the effect that the sale of the land effected by defendants Nos. 1 to 4, would not affect their reversionary rights. It may be mentioned here that Amar Kaur defendant acting as a guardian of the plaintiff-respondents along with defendant No. 1, had sold 79 Kanals and 19 Marlas of land, as described in the plaint. The sale was effected without obtaining the permission of the Court, as required under S. 8 of the Hindu

Minority and Guardianship Act, and on this score the sale was challenged to be void. The suit was resisted by the defendants on several grounds. The trial Court framed various issues to cover the points in controversy arising from the pleadings of the parties, and after considering the evidence produced by them, the suit of Devinder Singh respondent was decreed for possession to the extent of 1/4th share in the land, on payment of Rs.1,500/- plus some charges to the vendees or their successors-in-interest. The suit for declaration in regard to the remaining land was, however, dismissed. The appellant filed an appeal which was heard by the Additional District Judge, Karnal, who dismissed the same and affirmed the decision of the trial Court.

2. It is apparent from a perusal of the judgments of the Courts below that the only point which requires consideration in the present case is, as to whether the sale of the land effected by Amar Kaur, guardian of Devinder Singh plaintiff-respondent without obtaining the permission of the Court was valid, or not. There is no dispute that at the time when the sale was effected, the plaintiff was a minor and he was about 19 years of age, at the time when the suit was filed. Section 8(3) of the Hindu Minority and Guardianship Act, 1956 clearly lays down that any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him. Sub-section (2) referred to above, enacts that the natural guardian shall not, without the previous permission of the Court alienate any immovable property or part thereof, belonging to the minor. Mr. J. K. Sharma, learned counsel for the appellant has referred to *In re Krishnakant Maganlal*, AIR 1961 Guj 68 and *Smt. Sugga Bai v. Smt. Hiralal*, AIR 1969 Madh Pra 32, in support of his contention that the provisions of S. 8 of the Hindu Minority and Guardianship Act, are not applicable to a joint interest of the minor in the joint family property. The learned counsel, however, ignores the fact that there was no averment in the pleadings of the parties that the plaintiff-respondent was a member of the undivided Hindu family, nor was this matter incorporated in any of the issues framed in this case. The matter cannot be permitted to be raised for the first time in second appeal, as the determination thereof would require the recording of evidence. The mere facts that the plaintiff-respondent claimed 1/4th share in the property, would not necessarily mean that he was member of an undivided Hindu

family. The contention of the learned counsel must, therefore, be repelled. The finding of the Courts below that the sale by the guardian of the plaintiff-respondent without the permission of the Court was invalid is, therefore, quite correct and is affirmed.

3. No other point has been argued in this appeal which is without force, and is consequently dismissed, but with no order as to costs.

4. Appeal dismissed.

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